

FEB 22 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN MULHOLLAND,

Plaintiff - Appellant,

v.

**LEE HOLLIDAY; THOMAS LUTZ;
RODNEY NORRISH; WILLIAM
MCKINLEY; PATRICIA STAPLER;
ELIZABETH BURNETT;
ELIZABETH MCGHEE; GARY
PINKSTAFF; JOHN WOHLER;
TERRY STEWART, all sued in
individual and official capacities,**

Defendants - Appellees.

No. 04-17105

D.C. No. CV-02-00105-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Argued and Submitted December 5, 2005
San Francisco, California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Before: **KOZINSKI** and **McKEOWN**, Circuit Judges, and **HOGAN**^{**},
District Judge.

Plaintiff's complaint alleges wrongful conduct within the applicable two-year statute of limitations period. See Ariz. Rev. Stat. § 12-542; Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 974 (9th Cir. 2004). "In civil rights cases where the plaintiff appears pro se, the court must construe the pleadings liberally and must afford the plaintiff the benefit of any doubt." Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988).

In his handwritten complaint, filed in 2002 and amended in 2003, plaintiff states that he began seeking medical care immediately after entering prison in 1993. Six pages later, he alleges that defendants "have violated" his constitutional rights over a five-year period. The district court read these two paragraphs together as alleging that this unconstitutional conduct commenced in 1993 and continued for five years until 1998, which would have required Mulholland to file a complaint no later than 2000.

This is a plausible reading of the complaint, but not the only one. When there are two plausible readings of a pro se complaint, we pick the one more

^{**} The Honorable Michael R. Hogan, United States District Judge for the District of Oregon, sitting by designation.

favorable to the plaintiff. Elsewhere in his complaint, plaintiff seems to allege that the wrongful conduct is still ongoing. “Over a five (5) year period, the named defendants have refused to see plaintiff or address his serious medical needs,” and he continues to endure extreme pain as a result of defendants’ deliberate indifference. (Emphasis added.) And plaintiff claims that defendants’ “actions in failing to provide adequate medical care for the plaintiff violated, and continues to violate, the plaintiffs [sic] rights.” (Emphasis added.) The complaint thus pleads an ongoing violation within the limitations period.

Because plaintiff alleges conduct within the limitations period, we need not address his arguments that his complaint is rendered timely by Arizona’s saving statute or that he is entitled to equitable tolling.

On remand, the district court may, in its discretion, order plaintiff to amend his complaint to plead his allegations with greater specificity. This will allow the district court to determine in the first instance whether plaintiff has exhausted administrative remedies as to alleged wrongdoing within the limitations period. See 42 U.S.C. § 1997e(a).

REVERSED AND REMANDED.